Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 107112 February 24, 1994

NAGA TELEPHONE CO., INC. (NATELCO) AND LUCIANO M. MAGGAY, petitioners,
vs.
THE COURT OF APPEALS AND CAMARINES SUR II ELECTRIC COOPERATIVE, INC. (CASURECO II), respondents.

Ernesto P. Pangalangan for petitioners.

Luis General, Jr. for private respondent.

NOCON, *J.:*

The case of Reyes v. Caltex (Philippines), Inc. [1] enunciated the doctrine that where a person by his contract charges himself with an obligation possible to be performed, he must perform it, unless its performance is rendered impossible by the act of God, by the law, or by the other party, it being the rule that in case the party desires to be excused from performance in the event of contingencies arising thereto, it is his duty to provide the basis therefor in his contract.

With the enactment of the New Civil Code, a new provision was included therein, namely, Article 1267 which provides:

> When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

In the report of the Code Commission, the rationale behind this innovation was explained, thus:

> The general rule is that impossibility of performance releases the obligor. However, it is submitted that when the service has become so difficult as to be manifestly beyond the contemplation of the parties, the court should be authorized to release the obligor in whole or in part. The intention of the parties should govern and if it appears that the service turns out to be so difficult as to have been beyond their contemplation, it would be doing violence to that intention to hold their contemplation, it would be doing violence to that intention to hold the obligor still responsible. [2]

In other words, fair and square consideration underscores the legal precept therein.

Naga Telephone Co., Inc. remonstrates mainly against the application by the Court of Appeals of Article 1267 in favor of Camarines Sur II Electric Cooperative, Inc. in the case before us. Stated differently, the former insists that the complaint should have been dismissed for failure to state a cause of action.

The antecedent facts, as narrated by respondent Court of Appeals are, as follows:

Petitioner Naga Telephone Co., Inc. (NATELCO) is a telephone company rendering local as well as long distance telephone service in Naga City while private respondent Camarines Sur II Electric Cooperative, Inc. (CASURECO II) is a private corporation established for the purpose of operating an electric power service in the same city.

On November 1, 1977, the parties entered into a contract (Exh. "A") for the use by petitioners in the operation of its telephone service the electric light posts of private respondent in Naga City. In consideration therefor, petitioners agreed to install, free of charge, ten (10) telephone connections for the use by private respondent in the following places:

(a) 3 units — The Main Office of (private respondent);

(b) 2 Units — The Warehouse of (private respondent);

(c) 1 Unit — The Sub-Station of (private respondent) at Concepcion Pequeña;

(d) 1 Unit — The Residence of (private respondent's) President;

(e) 1 Unit — The Residence of (private respondent's) Acting General Manager; &

(f) 2 Units — To be determined by the General Manager. [3]

Said contract also provided:

> (a) That the term or period of this contract shall be as long as the party of the first part has need for the electric light posts of the party of the second part it being understood that this contract shall terminate when for any reason whatsoever, the party of the second part is forced to stop, abandoned [sic] its operation as a public service and it becomes necessary to remove the electric lightpost; (sic) [4]

It was prepared by or with the assistance of the other petitioner, Atty. Luciano M. Maggay, then a member of the Board of Directors of private respondent and at the same time the legal counsel of petitioner.

After the contract had been enforced for over ten (10) years, private respondent filed on January 2, 1989 with the Regional Trial Court of Naga City (Br. 28) C.C. No. 89-1642 against petitioners for reformation of the contract with damages, on the ground that it is too one-sided in favor of petitioners; that it is not in conformity with the guidelines of the National Electrification Administration (NEA) which direct that the reasonable compensation for the use of the posts is P10.00 per post, per month; that after eleven (11) years of petitioners' use of the posts, the telephone cables strung by them thereon have become much heavier with the increase in the volume of their subscribers, worsened by the fact that their linemen bore holes through the posts at which points those posts were broken during typhoons; that a post now costs as much as P2,630.00; so that justice and equity demand that the contract be reformed to abolish the inequities thereon.

As second cause of action, private respondent alleged that starting with the year 1981, petitioners have used 319 posts in the towns of Pili, Canaman, Magarao and Milaor, Camarines Sur, all outside Naga City, without any contract with it; that at the rate of P10.00 per post, petitioners should pay private respondent for the use thereof the total amount of P267,960.00 from 1981 up to the filing of its complaint; and that petitioners had refused to pay private respondent said amount despite demands.

And as third cause of action, private respondent complained about the poor servicing by petitioners of the ten (10) telephone units which had caused it great inconvenience and damages to the tune of not less than P100,000.00

In petitioners' answer to the first cause of action, they averred that it should be dismissed because (1) it does not sufficiently state a cause of action for reformation of contract; (2) it is barred by prescription, the same having been filed more than ten (10) years after the execution of the contract; and (3) it is barred by estoppel, since private respondent seeks to enforce the contract in the same action. Petitioners further alleged that their utilization of private respondent's posts could not have caused their deterioration because they have already been in use for eleven (11) years; and that the value of their expenses for the ten (10) telephone lines long enjoyed by private respondent free of charge are far in excess of the amounts claimed by the latter for the use of the posts, so that if there was any inequity, it was suffered by them.

Regarding the second cause of action, petitioners claimed that private respondent had asked for telephone lines in areas outside Naga City for which its posts were used by them; and that if petitioners had refused to comply with private respondent's demands for payment for the use of the posts outside Naga City, it was probably because what is due to them from private respondent is more than its claim against them.

And with respect to the third cause of action, petitioners claimed, *inter alia*, that their telephone service had been categorized by the National Telecommunication Corporation (NTC) as "very high" and of "superior quality."

During the trial, private respondent presented the following witnesses:

(1) Dioscoro Ragragio, one of the two officials who signed the contract in its behalf, declared that it was petitioner Maggay who prepared the contract; that the understanding between private respondent and petitioners was that the latter would only use the posts in Naga City because at that time, petitioners' capability was very limited and they had no expectation of expansion because of legal squabbles within the company; that private respondent agreed to allow petitioners to use its posts in Naga City because there were many subscribers therein who could not be served by them because of lack of facilities; and that while the telephone lines strung to the posts were very light in 1977, said posts have become heavily loaded in 1989.

(2) Engr. Antonio Borja, Chief of private respondent's Line Operation and Maintenance Department, declared that the posts being used by petitioners totalled 1,403 as of April 17, 1989, 192 of which were in the towns of Pili, Canaman, and Magarao, all outside Naga City (Exhs. "B" and "B-1"); that petitioners' cables strung to the posts in 1989 are much bigger than those in November, 1977; that in 1987, almost 100 posts were destroyed by typhoon Sisang: around 20 posts were located between Naga City and the town of Pili while the posts in barangay Concepcion, Naga City were broken at the middle which had been bored by petitioner's linemen to enable them to string bigger telephone lines; that while the cost per post in 1977 was only from P700.00 to P1,000.00, their costs in 1989 went up from P1,500.00 to P2,000.00, depending on the size; that some lines that were strung to the posts did not follow the minimum vertical clearance required by the National Building Code, so that there were cases in 1988 where, because of the low clearance of the cables, passing trucks would accidentally touch said cables causing the posts to fall and resulting in brown-outs until the electric lines were repaired.

(3) Dario Bernardez, Project Supervisor and Acting General Manager of private respondent and Manager of Region V of NEA, declared that according to NEA guidelines in 1985 (Exh. "C"), for the use by private telephone systems of electric cooperatives' posts, they should pay a minimum monthly rental of P4.00 per post, and considering the escalation of prices since 1985, electric cooperatives have been charging from P10.00 to P15.00 per post, which is what petitioners should pay for the use of the posts.

(4) Engineer Antonio Macandog, Department Head of the Office of Services of private respondent, testified on the poor service rendered by petitioner's telephone lines, like the telephone in their Complaints Section which was usually out of order such that they could not respond to the calls of their customers. In case of disruption of their telephone lines, it would take two to three hours for petitioners to reactivate them notwithstanding their calls on the emergency line.

(5) Finally, Atty. Luis General, Jr., private respondent's counsel, testified that the Board of Directors asked him to study the contract sometime during the latter part of 1982 or in 1983, as it had appeared very disadvantageous to private respondent. Notwithstanding his recommendation for the filing of a court action to reform the contract, the former general managers of private respondent wanted to adopt a soft approach with petitioners about the matter until the term of General Manager Henry Pascual who, after failing to settle the matter amicably with petitioners, finally agreed for him to file the present action for reformation of contract.

On the other hand, petitioner Maggay testified to the following effect:

(1) It is true that he was a member of the Board of Directors of private respondent and at the same time the lawyer of petitioner when the contract was executed, but Atty. Gaudioso Tena, who was also a member of the Board of Directors of private respondent, was the one who saw to it that the contract was fair to both parties.

(2) With regard to the first cause of action:

(a) Private respondent has the right under the contract to use ten (10) telephone units of petitioners for as long as it wishes without paying anything therefor except for long distance calls through PLDT out of which the latter get only 10% of the charges.

(b) In most cases, only drop wires and not telephone cables have been strung to the posts, which posts have remained erect up to the present;

(c) Petitioner's linemen have strung only small messenger wires to many of the posts and they need only small holes to pass through; and

(d) Documents existing in the NTC show that the stringing of petitioners' cables in Naga City are according to standard and comparable to those of PLDT. The accidents mentioned by private respondent involved trucks that were either overloaded or had loads that protruded upwards, causing them to hit the cables.

(3) Concerning the second cause of action, the intention of the parties when they entered into the contract was that the coverage thereof would include the whole area serviced by petitioners because at that time, they already had subscribers outside Naga City. Private respondent, in fact, had asked for telephone connections outside Naga City for its officers and employees residing there in addition to the ten (10) telephone units mentioned in the contract. Petitioners have not been charging private respondent for the installation, transfers and re-connections of said telephones so that naturally, they use the posts for those telephone lines.

(4) With respect to the third cause of action, the NTC has found petitioners' cable installations to be in accordance with engineering standards and practice and comparable to the best in the country.

On the basis of the foregoing countervailing evidence of the parties, the trial court found, as regards private respondent's first cause of action, that while the contract appeared to be fair to both parties when it was entered into by them during the first year of private respondent's operation and when its Board of Directors did not yet

have any experience in that business, it had become disadvantageous and unfair to private respondent because of subsequent events and conditions, particularly the increase in the volume of the subscribers of petitioners for more than ten (10) years without the corresponding increase in the number of telephone connections to private respondent free of charge. The trial court concluded that while in an action for reformation of contract, it cannot make another contract for the parties, it can, however, for reasons of justice and equity, order that the contract be reformed to abolish the inequities therein. Thus, said court ruled that the contract should be reformed by ordering petitioners to pay private respondent compensation for the use of their posts in Naga City, while private respondent should also be ordered to pay the monthly bills for the use of the telephones also in Naga City. And taking into consideration the guidelines of the NEA on the rental of posts by telephone companies and the increase in the costs of such posts, the trial court opined that a monthly rental of P10.00 for each post of private respondent used by petitioners is reasonable, which rental it should pay from the filing of the complaint in this case on January 2, 1989. And in like manner, private respondent should pay petitioners from the same date its monthly bills for the use and transfers of its telephones in Naga City at the same rate that the public are paying.

On private respondent's second cause of action, the trial court found that the contract does not mention anything about the use by petitioners of private respondent's posts outside Naga City. Therefore, the trial court held that for reason of equity, the contract should be reformed by including therein the provision that for the use of private respondent's posts outside Naga City, petitioners should pay a monthly rental of P10.00 per post, the payment to start on the date this case was filed, or on January 2, 1989, and private respondent should also pay petitioners the monthly dues on its telephone connections located outside Naga City beginning January, 1989.

And with respect to private respondent's third cause of action, the trial court found the claim not sufficiently proved.

Thus, the following decretal portion of the trial court's decision dated July 20, 1990:

> WHEREFORE, in view of all the foregoing, decision is hereby rendered ordering the reformation of the agreement (Exh. A); ordering the defendants to pay plaintiff's electric poles in Naga City and in the towns of Milaor, Canaman, Magarao and Pili, Camarines Sur and in other places where defendant NATELCO uses plaintiff's electric poles, the sum of TEN (P10.00) PESOS per plaintiff's pole, per month beginning January, 1989 and ordering also the plaintiff to pay defendant NATELCO the monthly dues of all its telephones including those installed at the residence of its officers, namely; Engr. Joventino Cruz, Engr. Antonio Borja, Engr. Antonio Macandog, Mr. Jesus Opiana and Atty. Luis General, Jr. beginning January, 1989. Plaintiff's claim for attorney's fees and expenses of litigation and defendants' counterclaim are both hereby ordered dismissed. Without pronouncement as to costs.

Disagreeing with the foregoing judgment, petitioners appealed to respondent Court of Appeals. In the decision dated May 28, 1992, respondent court affirmed the decision of the trial court, [5] but based on different grounds to wit: (1) that Article 1267 of the New Civil Code is applicable and (2) that the contract was subject to a potestative condition which rendered said condition void. The motion for reconsideration was denied in the resolution dated September 10, 1992. [6] Hence, the present petition.

Petitioners assign the following pertinent errors committed by respondent court:

> 1) in making a contract for the parties by invoking Article 1267 of the New Civil Code;
>
> 2) in ruling that prescription of the action for reformation of the contract in this case commenced from the time it became disadvantageous to private respondent; and
>
> 3) in ruling that the contract was subject to a potestative condition in favor of petitioners.

Petitioners assert earnestly that Article 1267 of the New Civil Code is not applicable primarily because the contract does not involve the rendition of service or a personal prestation and it is not for future service with future unusual change. Instead, the ruling in the case of *Occeña, et al. v. Jabson, etc., et al.*, [7] which interpreted the article, should be followed in resolving this case. Besides, said article was never raised by the parties in their pleadings and was never the subject of trial and evidence.

In applying Article 1267, respondent court rationalized:

> We agree with appellant that in order that an action for reformation of contract would lie and may prosper, there must be sufficient allegations as well as proof that the contract in question failed to express the true intention of the parties due to error or mistake, accident, or fraud. Indeed, in embodying the equitable remedy of reformation of instruments in the New Civil Code, the Code Commission gave its reasons as follows:

> Equity dictates the reformation of an instrument in order that the true intention of the contracting parties may be expressed. The courts by the reformation do not attempt to make a new contract for the parties, but to make the instrument express their real agreement. The rationale of the doctrine is that it would be unjust and inequitable to allow the enforcement of a written instrument which does not reflect or disclose the real meeting of the minds of the parties. The rigor of the legalistic rule that a written instrument should be the final and inflexible criterion and measure of the rights and obligations of the contracting parties is thus tempered to forestall the effects of mistake, fraud, inequitable conduct, or accident. (pp. 55-56, Report of Code Commission)

Thus, Articles 1359, 1361, 1362, 1363 and 1364 of the New Civil Code provide in essence that where through mistake or accident on the part of either or both of the parties or mistake or fraud on the part of the clerk or typist who prepared the instrument, the true intention of the parties is not expressed therein, then the instrument may be reformed at the instance of either party if there was mutual mistake on their part, or by the injured party if only he was mistaken.

Here, plaintiff-appellee did not allege in its complaint, nor does its evidence prove, that there was a mistake on its part or mutual mistake on the part of both parties when they entered into the agreement Exh. "A", and that because of this mistake, said agreement failed to express their true intention. Rather, plaintiff's evidence shows that said agreement was prepared by Atty. Luciano Maggay, then a member of plaintiff's Board of Directors and its legal counsel at that time, who was also the legal counsel for defendant-appellant, so that as legal counsel for both companies and presumably with the interests of both companies in mind when he prepared the aforesaid agreement, Atty. Maggay must have considered the same fair and equitable to both sides, and this was affirmed by the lower court when it found said contract to have been fair to both parties at the time of its execution. In fact, there were no complaints on the part of both sides at the time of and after the execution of said contract, and according to 73-year old Justino de Jesus, Vice President and General manager of appellant at the time who signed the agreement Exh. "A" in its behalf and who was one of the witnesses for the plaintiff (sic), both parties complied with said contract "from the very beginning" (p. 5, tsn, April 17, 1989).

That the aforesaid contract has become inequitous or unfavorable or disadvantageous to the plaintiff with the expansion of the business of appellant and the increase in the volume of its subscribers in Naga City and environs through the years, necessitating the stringing of more and bigger telephone cable wires by appellant to plaintiff's electric posts without a corresponding increase in the ten (10) telephone connections given by appellant to plaintiff free of charge in the agreement Exh. "A" as consideration for its use of the latter's electric posts in Naga City, appear, however, undisputed from the totality of the evidence on record and the lower court so found. And it was for this reason that in the later (sic) part of 1982 or 1983 (or five or six years after the subject agreement was entered into by the parties), plaintiff's Board of Directors already asked Atty. Luis General who had become their legal counsel in 1982, to study said agreement which they believed had become disadvantageous to their company and to make the proper recommendation, which study Atty. General did, and thereafter, he already recommended to the Board the filing of a court action to reform said contract, but no action was taken on Atty. General's recommendation because the former general managers of plaintiff wanted to adopt a soft approach in discussing the matter with appellant, until, during the term of General Manager Henry Pascual, the latter, after failing to settle the problem with Atty. Luciano Maggay who had become the president and general manager of appellant, already agreed for Atty. General's filing of the present action. The fact that said contract has become inequitous or disadvantageous to plaintiff as the years went by did not, however, give plaintiff a cause of action for reformation of said contract, for the reasons already pointed out earlier. But this does not mean that plaintiff is completely without a remedy, for we believe that the allegations of its complaint herein and the evidence it has presented sufficiently make out a cause of action under Art. 1267 of the New Civil Code for its release from the agreement in question.

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The understanding of the parties when they entered into the Agreement Exh. "A" on November 1, 1977 and the prevailing circumstances and conditions at the time, were described by Dioscoro Ragragio, the President of plaintiff in 1977 and one of its two officials who signed said agreement in its behalf, as follows:

> Our understanding at that time is that we will allow NATELCO to utilize the posts of CASURECO II only in the City of Naga because at that time the capability of NATELCO was very limited, as a matter of fact we do [sic] not expect to be able to expand because of the legal squabbles going on in the NATELCO. So, even at that time there were so many subscribers in Naga City that cannot be served by the NATELCO, so as a mater of

> public service we allowed them to sue (sic) our posts within the Naga City. (p. 8, tsn April 3, 1989)
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> Ragragio also declared that while the telephone wires strung to the electric posts of plaintiff were very light and that very few telephone lines were attached to the posts of CASURECO II in 1977, said posts have become "heavily loaded" in 1989 (tsn, *id.*).
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> In truth, as also correctly found by the lower court, despite the increase in the volume of appellant's subscribers and the corresponding increase in the telephone cables and wires strung by it to plaintiff's electric posts in Naga City for the more 10 years that the agreement Exh. "A" of the parties has been in effect, there has been no corresponding increase in the ten (10) telephone units connected by appellant free of charge to plaintiff's offices and other places chosen by plaintiff's general manager which was the only consideration provided for in said agreement for appellant's use of plaintiffs electric posts. Not only that, appellant even started using plaintiff's electric posts outside Naga City although this was not provided for in the agreement Exh. "A" as it extended and expanded its telephone services to towns outside said city. Hence, while very few of plaintiff's electric posts were being used by appellant in 1977 and they were all in the City of Naga, the number of plaintiff's electric posts that appellant was using in 1989 had jumped to 1,403,192 of which are outside Naga City (Exh. "B"). Add to this the destruction of some of plaintiff's poles during typhoons like the strong typhoon Sisang in 1987 because of the heavy telephone cables attached thereto, and the escalation of the costs of electric poles from 1977 to 1989, and the conclusion is indeed ineluctable that the agreement Exh. "A" has already become too one-sided in favor of appellant to the great disadvantage of plaintiff, in short, the continued enforcement of said contract has manifestly gone far beyond the contemplation of plaintiff, so much so that it should now be released therefrom under Art. 1267 of the New Civil Code to avoid appellant's unjust enrichment at its (plaintiff's) expense. As stated by Tolentino in his commentaries on the Civil Code citing foreign civilist Ruggiero, *"equity demands a certain economic equilibrium between the prestation and the counter-prestation, and does not permit the unlimited impoverishment of one party for the benefit of the other by the excessive rigidity of the principle of the obligatory force of contracts* (IV Tolentino, Civil Code of the Philippines, 1986 ed.,
> pp. 247-248).
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> We therefore, find nothing wrong with the ruling of the trial court, although based on a different and wrong premise (i.e., reformation of contract), that from the date of the filing of this case, appellant must pay for the use of plaintiff's electric posts in Naga City at the reasonable monthly rental of P10.00 per post, while plaintiff should pay appellant for the telephones in the same City that it was formerly using free of charge under the terms of the agreement Exh. "A" at the same rate being paid by the general public. In affirming said ruling, we are not making a new contract for the parties herein, but we find it necessary to do so in order not to disrupt the basic and essential services being rendered by both parties herein to the public and to avoid unjust enrichment by appellant at the expense of plaintiff, said arrangement to continue only until such time as said parties can re-negotiate another agreement over the same
> subject-matter covered by the agreement Exh. "A". Once said agreement is reached and executed by the parties, the aforesaid ruling of the lower court and affirmed by us shall cease to exist and shall be substituted and superseded by their new agreement. . . .. [8]

Article 1267 speaks of "service" which has become so difficult. Taking into consideration the rationale behind this provision, [9] the term "service" should be understood as referring to the "performance" of the obligation. In the present case, the obligation of private respondent consists in allowing petitioners to use its posts in Naga City, which is the service contemplated in said article. Furthermore, a bare reading of this article reveals that it is not a requirement thereunder that the contract be for future service with future unusual change. According to Senator Arturo M. Tolentino, [10] Article 1267 states in our law the doctrine of unforseen events. This is said to be based on the discredited theory of *rebus sic stantibus* in public international law; under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist the contract also ceases to exist. Considering practical needs and the demands of equity and good faith, the disappearance of the basis of a contract gives rise to a right to relief in favor of the party prejudiced.

In a nutshell, private respondent in the Occeña case filed a complaint against petitioner before the trial court praying for *modification* of the terms and conditions of the contract that they entered into by fixing the proper shares that should pertain to them out of the gross proceeds from the sales of subdivided lots. We ordered the dismissal of the complaint therein for failure to state a sufficient cause of action. We rationalized that the Court of Appeals misapplied Article 1267 because:

> . . . respondent's complaint seeks *not* release from the subdivision contract but that the court "render judgment *modifying* the terms and conditions of the contract . . . by *fixing* the *proper shares* that should *pertain* to the herein parties out of the *gross proceeds* from the sales of subdivided lots of subject subdivision". The cited article (Article 1267) does not grant the courts (the) authority to

> remake, modify or revise the contract or to fix the division of shares between the parties as contractually stipulated with the force of law between the parties, so as to substitute its own terms for those covenanted by the parties themselves. Respondent's complaint for modification of contract manifestly has no basis in law and therefore states no cause of action. Under the particular allegations of respondent's complaint and the circumstances therein averred, the courts cannot even in equity grant the relief sought. [11]

The ruling in the Occeña case is not applicable because we agree with respondent court that the allegations in private respondent's complaint and the evidence it has presented sufficiently made out a cause of action under Article 1267. We, therefore, release the parties from their correlative obligations under the contract. However, our disposition of the present controversy does not end here. We have to take into account the possible consequences of merely releasing the parties therefrom: petitioners will remove the telephone wires/cables in the posts of private respondent, resulting in disruption of their service to the public; while private respondent, in consonance with the contract [12] will return all the telephone units to petitioners, causing prejudice to its business. We shall not allow such eventuality. Rather, we require, as ordered by the trial court: 1) petitioners to pay private respondent for the use of its posts in Naga City and in the towns of Milaor, Canaman, Magarao and Pili, Camarines Sur and in other places where petitioners use private respondent's posts, the sum of ten (P10.00) pesos per post, per month, beginning January, 1989; and 2) private respondent to pay petitioner the monthly dues of all its telephones at the same rate being paid by the public beginning January, 1989. The peculiar circumstances of the present case, as distinguished further from the Occeña case, necessitates exercise of our equity jurisdiction. [13] By way of emphasis, we reiterate the rationalization of respondent court that:

> . . . In affirming said ruling, we are not making a new contract for the parties herein, but we find it necessary to do so in order not to disrupt the basic and essential services being rendered by both parties herein to the public and to avoid unjust enrichment by appellant at the expense of plaintiff . . . . [14]

Petitioners' assertion that Article 1267 was never raised by the parties in their pleadings and was never the subject of trial and evidence has been passed upon by respondent court in its well reasoned resolution, which we hereunder quote as our own:

> First, we do not agree with defendant-appellant that in applying Art. 1267 of the New Civil Code to this case, we have changed its theory and decided the same on an issue not invoked by plaintiff in the lower court. For basically, the main and pivotal issue in this case is whether the continued enforcement of the contract Exh. "A" between the parties has, through the years (since 1977), become too inequitous or disadvantageous to the plaintiff and too one-sided in favor of defendant-appellant, so that a solution must be found to relieve plaintiff from the continued operation of said agreement and to prevent defendant-appellant from further unjustly enriching itself at plaintiff's expense. It is indeed unfortunate that defendant had turned deaf ears to plaintiffs requests for renegotiation, constraining the latter to go to court. But although plaintiff cannot, as we have held, correctly invoke reformation of contract as a proper remedy (there having been no showing of a mistake or error in said contract on the part of any of the parties so as to result in its failure to express their true intent), this does not mean that plaintiff is absolutely without a remedy in order to relieve itself from a contract that has gone far beyond its contemplation and has become so highly inequitous and disadvantageous to it through the years because of the expansion of defendant-appellant's business and the increase in the volume of its subscribers. And as it is the duty of the Court to administer justice, it must do so in this case in the best way and manner it can in the light of the proven facts and the law or laws applicable thereto.
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> It is settled that when the trial court decides a case in favor of a party on a certain ground, the appellant court may uphold the decision below upon some other point which was ignored or erroneously decided by the trial court (Garcia Valdez v. Tuazon, 40 Phil. 943; Relativo v. Castro, 76 Phil. 563; Carillo v. Salak de Paz, 18 SCRA 467). Furthermore, the appellate court has the discretion to consider an unassigned error that is closely related to an error properly assigned (Paterno v. Jao Yan, 1 SCRA 631; Hernandez v. Andal, 78 Phil. 196). It has also been held that the Supreme Court (and this Court as well) has the authority to review matters, even if they are not assigned as errors in the appeal, if it is found that their consideration is necessary in arriving at a just decision of the case (Saura Import & Export Co., Inc. v. Phil. International Surety Co. and PNB, 8 SCRA 143). For it is the material allegations of fact in the complaint, not the legal conclusion made therein or the prayer, that determines the relief to which the plaintiff is entitled, and the plaintiff is entitled to as much relief as the facts warrant although that relief is not specifically prayed for in the complaint (Rosales v. Reyes and Ordoveza, 25 Phil. 495; Cabigao v. Lim, 50 Phil. 844; Baguioro v. Barrios, 77 Phil. 120). To quote an old but very illuminating decision of our Supreme Court through the pen of American jurist Adam C. Carson:

> "Under our system of pleading it is the duty of the courts to grant the relief to which the parties are shown to be entitled by the allegations in their pleadings and the facts proven at the trial, and the mere fact that they themselves misconstrue the legal effect of the facts thus alleged and proven will not prevent the court from placing the just construction thereon and adjudicating the issues accordingly." (Alzua v. Johnson, 21 Phil. 308)

And in the fairly recent case of Caltex Phil., Inc. v IAC, 176 SCRA 741, the Honorable Supreme Court also held:

> We rule that the respondent court did not commit any error in taking cognizance of the aforesaid issues, although not raised before the trial court. The presence of strong consideration of substantial justice has led this Court to relax the well-entrenched rule that, except questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings (Cordero v. Cabral, L-36789, July 25, 1983, 123 SCRA 532). . . .

We believe that the above authorities suffice to show that this Court did not err in applying Art. 1267 of the New Civil Code to this case. Defendant-appellant stresses that the applicability of said provision is a *question of fact*, and that it should have been given the opportunity to present evidence on said question. But defendant-appellant cannot honestly and truthfully claim that it (did) not (have) the opportunity to present evidence on the issue of whether the continued operation of the contract Exh. "A" has now become too one-sided in its favor and too inequitous, unfair, and disadvantageous to plaintiff. As held in our decision, the abundant and copious evidence presented by both parties in this case and summarized in said decision established the following essential and vital facts which led us to apply Art. 1267 of the New Civil Code to this case:

xxx xxx xxx [15]

On the issue of prescription of private respondent's action for reformation of contract, petitioners allege that respondent court's ruling that the right of action "arose only after said contract had already become disadvantageous and unfair to it due to subsequent events and conditions, which must be sometime during the latter part of 1982 or in 1983 . . ." [16] is erroneous. In reformation of contracts, what is reformed is not the contract itself, but the instrument embodying the contract. It follows that whether the contract is disadvantageous or not is irrelevant to reformation and therefore, cannot be an element in the determination of the period for prescription of the action to reform.

Article 1144 of the New Civil Code provides, *inter alia*, that an action upon a written contract must be brought within ten (10) years from the time the right of action accrues. Clearly, the ten (10) year period is to be reckoned *from the time the right of action accrues* which is not necessarily the date of execution of the contract. As correctly ruled by respondent court, private respondent's right of action arose "sometime during the latter part of 1982 or in 1983 when according to Atty. Luis General, Jr. . . ., he was asked by (private respondent's) Board of Directors to study said contract as it already appeared disadvantageous to (private respondent) (p. 31, tsn, May 8, 1989). (Private respondent's) cause of action to ask for reformation of said contract should thus be considered to have arisen only in 1982 or 1983, and from 1982 to January 2, 1989 when the complaint in this case was filed, ten (10) years had not yet elapsed." [17]

Regarding the last issue, petitioners allege that there is nothing purely potestative about the prestations of either party because petitioner's permission for free use of telephones is not made to depend purely on their will, neither is private respondent's permission for free use of its posts dependent purely on its will.

Apart from applying Article 1267, respondent court cited another legal remedy available to private respondent under the allegations of its complaint and the preponderant evidence presented by it:

> . . . we believe that the provision in said agreement —
>
> (a) That the term or period of this contract shall be *as long as the party of the first part* [herein appellant] has need for the electric light posts of the party of the second part [herein plaintiff] it being understood that this contract shall terminate when for any reason whatsoever, the party of the second part is forced to stop, abandoned [sic] its operation as a public service and it becomes necessary to remove the electric light post [*sic*]"; (Emphasis supplied)

is invalid for being purely potestative on the part of appellant as it leaves the continued effectivity of the aforesaid agreement to the latter's sole and exclusive will as long as plaintiff is in operation. A similar provision in a contract of lease wherein the parties agreed that the lessee could stay on the leased premises "for as long as the defendant needed the premises and can meet and pay said increases" was recently held by the Supreme Court in Lim v. C.A., 191 SCRA 150, citing the much earlier case of Encarnacion v. Baldomar, 77 Phil. 470, as invalid for being "a purely potestative

condition because it leaves the effectivity and enjoyment of leasehold rights to the sole and exclusive will of the lessee." Further held the High Court in the Lim case:

> The continuance, effectivity and fulfillment of a contract of lease cannot be made to depend exclusively upon the free and uncontrolled choice of the lessee between continuing the payment of the rentals or not, completely depriving the owner of any say in the matter. Mutuality does not obtain in such a contract of lease of no equality exists between the lessor and the lessee since the life of the contract is dictated solely by the lessee.

The above can also be said of the agreement Exh. "A" between the parties in this case. There is no mutuality and equality between them under the afore-quoted provision thereof since the life and continuity of said agreement is made to depend as long as appellant needs plaintiff's electric posts. And this is precisely why, since 1977 when said agreement was executed and up to 1989 when this case was finally filed by plaintiff, it could do nothing to be released from or terminate said agreement notwithstanding that its continued effectivity has become very disadvantageous and inequitous to it due to the expansion and increase of appellant's telephone services within Naga City and even outside the same, without a corresponding increase in the ten (10) telephone units being used by plaintiff free of charge, as well as the bad and inefficient service of said telephones to the prejudice and inconvenience of plaintiff and its customers. . . . [18]

Petitioners' allegations must be upheld in this regard. A potestative condition is a condition, the fulfillment of which depends upon the sole will of the debtor, in which case, the conditional obligation is void. [19] Based on this definition, respondent court's finding that the provision in the contract, to wit:

> (a) That the term or period of this contract shall be as long as the party of the first part (petitioner) has need for the electric light posts of the party of the second part (private respondent) . . ..

is a potestative condition, is correct. However, it must have overlooked the other conditions in the same provision, to wit:

> . . . it being understood that this contract shall terminate when for any reason whatsoever, the party of the second part (private respondent) is forced to stop, abandoned (sic) its operation as a public service and it becomes necessary to remove the electric light post (sic);

which are casual conditions since they depend on chance, hazard, or the will of a third person. [20] In sum, the contract is subject to mixed conditions, that is, they depend partly on the will of the debtor and partly on chance, hazard or the will of a third person, which do not invalidate the aforementioned provision. [21] Nevertheless, in view of our discussions under the first and second issues raised by petitioners, there is no reason to set aside the questioned decision and resolution of respondent court.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals dated May 28, 1992 and its resolution dated September 10, 1992 are AFFIRMED.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado and Puno, JJ., concur.

#Footnotes

1 84 Phil. 654.

2 Report of the Code Commission, p. 133; cited in *Rollo*, p. 57.

3 Records, p. 6.

4 *Ibid*, pp. 6-7.

5 *Rollo*, p. 62.

6 *Rollo*, p. 71.

7 G.R. No. L-44349, October 29, 1976, 73 SCRA 637.

8 *Rollo,* pp. 54-59.

9 *Supra.*

10 Commentaries and Jurisprudence on the Civil Code of the Philippines, 1991 Edition p. 347.

11 At p. 641.

12 Records, p. 7.

13 Agne, et al. v. Director of Lands, et al., G.R. No. L-40399, February 9, 1990, 181 SCRA 793.

14 *Rollo,* p.59.

15 *Rollo*, pp. 66-69.

16 *Rollo*, pp. 53-54.

17 *Rollo*, pp. 53-54.

18 *Rollo*, pp. 59-61.

19 Article 1182 of the New Civil Code.

20 Civil Code of the Philippines Annotated by Edgardo L. Paras, 1985 Edition, p. 171.

21 *Ibid*.

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